

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SCHAWBEL TECHNOLOGIES LLC,

Plaintiff,

v.

THE HEAT FACTORY USA, INC.,

Defendant.

Civil Action No. 18-CV-10227

**PLAINTIFF'S MOTION TO COMPEL RESPONSE TO FIRST SET OF
INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
BY THE HEAT FACTORY USA, INC.**

Pursuant to Fed. R. Civ. P. Rule 37(a)(3)(B) and Local Rule 37.1, Schawbel Technologies LLC ("Schawbel"), hereby moves to compel The Heat Factory USA, Inc. ("Heat Factory") to respond to Schawbel's First Set of Interrogatories and First Request for Production of Documents (collectively the "Discovery Requests"). Schawbel served the Discovery Requests on Heat Factory via first-class mail on June 1, 2018. Pursuant to Fed. R. Civ. P. 33(b)(2) and 34(b)(2)(A), Heat Factory was required to respond to the Discovery Requests on or before July 5, 2018, within 30 days of service. To date, Heat Factory has failed to serve any response to Schawbel's Discovery Requests.

Pursuant to the Scheduling Order for this case (Docket No. 22), which the parties jointly presented to the Court for approval, the fact discovery period expires on December 14, 2018.¹ Schawbel requests that the Court order Heat Factory to respond fully to the Discovery Requests within 10 days of this Court's Order allowing this Motion. Schawbel also requests that the

¹ On July 13, 2018, counsel of record to Heat Factory filed a motion to withdraw as counsel (Docket No. 23). Schawbel opposes any request for an extension or modification of the Scheduling Order deadlines, including the discovery deadline, in connection with the relief sought through the motion to withdraw.

Court's order include a ruling that Heat Factory has waived any potential objections to the Discovery Requests, pursuant to Fed. R. Civ. P. 33(b)(4), Local Rule 33.1(c)(1) and Local Rule 34.1(c)(1), as a result of its failure to serve timely responses.

Finally, as a result of Heat Factory's failure to respond in any way to the Discovery Requests, and despite Schawbel's good faith effort to resolve the discovery dispute without Court involvement, Schawbel's moves pursuant to Fed. R. Civ. P. Rule 37(a)(5) for all reasonable expenses, including attorneys' fees, associated with the filing of this Motion to Compel.

WHEREFORE, Schawbel Technologies, LLC, respectfully requests that this Court enter an order:

- (i) Allowing the Motion to Compel Response to First Set of Interrogatories and First Request for Production of Documents by Defendant and requiring Defendant respond to the Discovery Requests within 10 days of the Court's Order without leave to file any objections;
- (ii) Awarding Plaintiff's reasonable expenses, including attorney's fees, incurred in bringing this motion; and
- (iii) Granting any such further relief as is just and proper.

Respectfully Submitted,

SCHAWBEL TECHNOLOGIES, LLC

By its attorneys,

/s/ Anthony R. Leone

Michael P. Connolly (BBO #637642)

Anthony R. Leone (BBO #681760)

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Dated: July 18, 2018

CERTIFICATE OF LOCAL RULE 37.1 CONFERENCE

Counsel for Schawbel Technologies LLC states that it has complied with the requirements as set forth in the Local Rules for the United States District Court for the District of Massachusetts Local Rule 37.1. At approximately 2:30 p.m. on July 13, 2018, counsel for the parties telephonically conferred, for approximately seven minutes, in good faith to narrow the areas of disagreement. The telephonic conference included Michael Connolly on behalf of Schawbel Technologies LLC and Lawrence Delaney and Gina Puls on behalf of The Heat Factory USA, Inc. Despite Schawbel Technologies LLC's good faith attempt, the disputed issues were not resolved at the discovery conference.

/s/Anthony R. Leone

Anthony R. Leone

LOCAL RULE 7.1 CERTIFICATION

In accordance with Local Rule 7.1, I hereby certify that counsel for Schawbel Technologies LLC, has conferred with counsel to The Heat Factory USA, Inc. before filing this motion in an attempt to resolve or narrow the issues contained therein.

/s/Anthony R. Leone

Anthony R. Leone

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CERTIFICATE OF SERVICE

I, Anthony R. Leone, hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 18, 2018.

/s/ Anthony R. Leone

Anthony R. Leone

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